



JOHN ELIAS BALDACCI
GOVERNOR

STATE OF MAINE
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES
BOARD OF PESTICIDES CONTROL
28 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III
COMMISSIONER
HENRY S. JENNINGS.
ACTING DIRECTOR

BOARD OF PESTICIDES CONTROL

July 21, 2006

Eagle Room, Hilton Garden Inn
5 Park Street, Freeport

MINUTES

9:00 A.M.

1. Introductions of Board and Staff

- ☒ Members and staff introduced themselves.

2. Public Information Gathering Hearing, Risks & Benefits of Applying Insecticides to Control the Browntail Moth

Public Law 2006, Chapter 553 imposed temporary restrictions on the application of pesticides to control Browntail Moth near marine waters in York, Cumberland and Sagadahoc Counties. In addition, the law requires the Board of Pesticides Control to complete an assessment of risks and benefits from applying pesticides near marine waters and to report its findings to the next regular session of the legislature. Consequently, the Board will be taking public comment on the risks and benefits at this meeting. Written comments will also be accepted until the close of business on August 4, 2006. Comments should be addressed to Henry Jennings, Acting Director, Maine Board of Pesticides Control, 28 State House Station, Augusta, Maine 04333 or email to Henry.Jennings@maine.gov.

- ☒ Chairperson Eckert provided an overview of the reasons behind, and the purpose of the public information gathering meeting. Eckert explained that recent legislation required the Board to conduct a risk/benefit analysis of spraying to control browntail moth caterpillars near marine waters. The public information gathering meeting is part of the analysis with a special focus on obtaining information from the public about the effect of the browntail moth caterpillar hairs. She noted there were sign-up sheets outside the room for members of the public to indicate an interest in testifying.

Jennings also briefly reviewed PL 2006, Chapter 553 pointing out it imposes temporary restrictions on pesticides used to control browntail moth near marine waters and requires the Board to conduct monitoring, which has already been done. He also clarified that the

Board only regulates the use and distribution of pesticides and has no role in organizing public spray programs.

Jennifer Andersen of Environment Maine supported restrictions on browntail moth spraying near marine waters. She advocated for non-chemical approaches to controlling the caterpillars. She described a pheromone disruption product sold in the UK and also suggested clipping the webs as a non-chemical approach.

Elizabeth Ring, a local resident, also supported restrictions on spraying near the coast. At the same time, she agreed the toxic hairs cause significant impacts for people living near the coast. She hoped there would be ways to eradicate the pest without harming the coastal environment.

Tim Lindsey of Bartlett Tree Service questioned whether there was any scientific evidence to suggest that pesticides used to control the browntail moth were harming the lobster population. He felt that failure to control browntail caterpillars near the shore might result in tree mortality and then soil erosion. Lindsey pointed out that fuel and oil discharged from watercraft was a more likely problem.

John Sowles, Director for the Division of Ecology in the Department of Marine Resources and a member of the Environmental Risk Advisory Committee (ERAC) noted he was surprised to find that Dimilin presented the least risk to lobsters of the insecticides studied. He pointed out that the biggest issue the ERAC faced in assessing the insecticide risks was a lack of pesticide-use data and exposure data for lobsters. He stressed the importance of applicator education and his concern about pesticide use by untrained homeowners.

Patrice McCarron, Executive Director for the Maine Lobstermen's Association, stated the association is trying to be flexible and practical about the spraying. Even though available studies indicate that Browntail spraying probably isn't resulting in significant lobster mortality, there may be sublethal effects from low levels of exposure. Therefore, she felt it was prudent to be cautious about protecting the resource.

3. Minutes of the May 12, 2006 Board Meeting

Action Needed: Amend and/or Approve

Presentation By: Henry Jennings
Acting Director

- ☒ Eckert noted two words were transposed at the end of item five of the May 12 Minutes, reading "fungicide effective" instead of "effective fungicide."

Walton/Jemison: Moved and seconded approval of the minutes as amended.

In Favor: Unanimous

4. Request from the Lawn Care Industry to Reclassify Trichlorfon as a State Restricted Use Product

Terry Shoemaker of Sterling Insect/Lawn Control has written to the Board requesting that the state classification of trichlorfon (Dylox) be changed from its current status as a Limited Use Pesticide (LUP) to a state Restricted Use Pesticide (RUP) which could be purchased and applied by any licensed pesticide applicator. Shoemaker supplied an article on grub control by Dr. Patricia Vittum of the University of Massachusetts that identifies trichlorfon as the only fast-acting insecticide effective against adult grubs. Shoemaker also supplied a list of other licensed applicators that support the change. After a lengthy review concluded in 2005, the Board's Medical Advisory Committee remains concerned about trichlorfon, and does not recommend that it be reclassified as general use.

Presentation By:	Gary Fish	Lebelle Hicks
	Certification & Licensing Specialist	Toxicologist

Action Needed: Determine whether to proceed with rule-making to reclassify trichlorfon

- ☒ Fish directed Board members to the report by Patricia Vittum of UMass and pointed out that she is probably the foremost expert on grub control in the Northeast. He stated that Dylox is the only available product that can be used effectively after grub damage becomes evident. Other effective products must be used as preventatives in the late spring/early summer. Terry Shoemaker stated that Sevin – the only product available in Maine as a rescue treatment - was completely ineffective. Therefore, use of a product like Dylox is consistent with some IPM principles.

Members expressed concerns about adding OP uses in Maine since OPs are very controversial and being phased out nationally. There was some discussion about possible alternative controls, although none were viewed as effective as Dylox. Concerns were also voiced about the mobility of Dylox. Board members felt the lawn care BMPs under development might help address this concern. There was no Board consensus on what track to take. Randlett advised that no consensus was necessary at this point since any change in the status of Dylox would require a rule-making process and a Board vote.

Walton/Stevenson: Moved and seconded that the Board initiate rule-making to change the classification of Dylox to restricted use prior to the 2007 season.

In Favor: Eckert, Walton, Stevenson and Qualey

Opposed: Humphreys, Jemison

Russell Libby from MOFGA suggested that the staff should check the Board's regulatory agenda to see if such action was listed.

5. Enforcement Action Against The Turf Doctor of Portland

The staff will detail the results of an investigation into a complaint filed by Judge David Cohen of Standish alleging The Turf Doctor made two unauthorized pesticide applications to his lawn during the spring of 2005. Staff findings supported the allegations but The Turf Doctor disagrees with these findings and is seeking further review.

Presentation By: Henry Jennings
Acting Director

Action Needed: Decision on Appropriate Enforcement Response

- ☒ Jennings stated that he had received a response to an email reminder to Michael Russo from Suzanne Ruth of The Turf Doctor on July 20, 2006, stating that Mr. Russo would be on vacation until July 31, 2006. He went over the efforts he had made to ensure that Russo was aware of the date of the Board Meeting following Russo's request to postpone the matter from the May 12, 2006 Board Meeting. Randlett stated he felt Russo had received adequate notice. Members felt that Russo shared in the responsibility to ensure his presence at the meeting since he requested a Board review and because he asked to postpone the matter from the previous meeting. There was considerable sentiment that failing to heed Judge Cohen's request to cancel the service was an egregious act, and the matter should proceed on an enforcement track.

Qualey/Stevenson: Moved and seconded to refer the matter to the Office of the Attorney General.

In Favor: Unanimous

6. Aroostook Arboriculture Request for Variance for Transmission Line Vegetation Management Program

The Board's drift regulations allow applicators to seek a variance from any standards they feel are unreasonable for their type of operation. This firm regularly conducts highway vegetation control activities as a contractor for the Maine Department of Transportation (MDOT) and has been requested to control brush on transmission power lines for Maine Public Service Company. They are seeking a variance so they do not have to record all sensitive areas within 500 feet of the transmission line. Instead, they propose taking a number of other precautions that include following MDOT buffer standards, employing several drift control measures and providing public notification through postings and newspaper listings.

Presentation By: Henry Jennings

Acting Director

Action Needed: Approve/Deny the variance request.

- ☒ Jennings directed Board Members to the Variance Application filed by Darren Donovan of Aroostook Arboriculture to treat woody brush along the Maine Public Service transmission lines. He pointed out that Aroostook Arboriculture has several years of experience treating roadside brush. Walton expressed concern about the use of Tordon and stated that MDOT had discontinued its use because of its persistence and ground water concerns. Jennings stated he would convey those concerns to Donovan. Humphreys asked Jennings to report the results of his conversation.

Jemison/Walton: Moved and seconded that the variance be approved.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with S & T Property Maintenance of Hermon

On June 3, 1998, the Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts or law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves unlicensed commercial application of herbicides to control vegetation around the former Ames store in Augusta.

Presentation By: Henry S. Jennings
Acting Director

Action Needed: Decision on appropriate enforcement response

- ☒ Jennings reviewed the circumstances surrounding the proposed consent agreement. He pointed out the S & T Property Maintenance was a small company that only hired employees occasionally. There was no indication that pesticide use was common with the company. Therefore, the proposed penalty was on the lower end of the scale. Stevenson questioned the amount of the penalty as compared to a case involving a lawn care company making numerous applications during an unusually wet period.

Humphreys/Jemison: Moved and seconded the consent agreement be approved.

In Favor: Unanimous

8. Review of Board Planning Session Priorities

The Board held its annual planning session on June 9, 2006, at Maple Hill Farm in Hallowell to discuss current issues and brainstorm solutions. Subsequently, each Board member prioritized the issues, and their rankings were combined to create the Board's discretionary task list for the upcoming year. The staff will present the results of the Board's prioritization process and seek input on how to proceed with its top priorities.

Presentation By: Henry Jennings
Acting Director

Action Needed: Determine the next steps in addressing the Board's priority tasks.

- ☒ Jennings directed Board members to the document showing the results of their discretionary task prioritization voting. Aerial spraying was voted the top priority by a wide margin, followed by organophosphates and a waiver for the registry fee. Members discussed developing various committees to research aerial issues and make recommendations. Consensus was reached that two committees should be created: A technical committee to evaluate the most recent research on aerial spraying and a stakeholders committee to develop recommendations for Board consideration on ways to address the issues.

The Board also discussed the idea of developing a waiver mechanism for the notification registry.

Walton/Humphreys: Moved and seconded that the staff develop a waiver proposal for future rule-making.

In Favor: Unanimous

9. Consideration of Consolidating the Commercial Categories

At the Board's annual planning session, ideas to improve organizational efficiency were discussed. Ideas that don't involve extensive staff or Board time were to be placed on the agenda of future Board meeting for discussion. The first idea involves consolidating some of the Board's 35 commercial categories, subcategories and options.

Presentation By: Gary Fish
Certification & Licensing Specialist

Action Needed: Determine whether to pursue category consolidation

- ☒ Fish reviewed the proposal to decrease the number of the Board's licensing subcategories. He explained that Maine has more subcategories than the federal minimum and more than other states. He pointed out a few subcategories where the difference in the training material was minimal, making them good candidates to be combined. Consensus was reached to add the proposal to the list of minor rule-making initiatives.

10. Discussion of Potential Regulatory Language to Prohibit Unauthorized Application of Pesticides

The Board has taken enforcement action on a series of incidents over the years in which a pesticide application has been made – usually by mistake – to a property without the consent of the owner or lessee. In taking these actions, the Board has relied on general statutory language that prohibits careless, faulty or negligent pesticide application. The staff will discuss potential regulatory language to make it explicit that the property owner or lessee must give prior consent for pesticide applications.

Presentation By: Henry Jennings
Acting Director

Action Needed: Review/Revise Language for Future Rule-making

- ☒ Jennings directed the Board to Item 10 of the Board packet containing draft language for Chapter 20 that would explicitly make it unlawful to apply pesticides on the property of another without proper consent. Walton expressed concern that the draft language may impact the ability of easement holders to maintain a ROW. Jemison asked if language could be added to require that permission be updated every year, in an effort to prevent the type of incident that The Turf Doctor had encountered. Consensus was reached that the staff should research the two issues identified by the Board and present a new draft at a future meeting.

11. Other Old or New Business

a. ERAC Update – L. Hicks

- ☒ Hicks stated she had scheduled an ERAC Meeting for September 13. Diane Cowan, PhD of the Lobster Conservancy will attend and present her juvenile lobster molting data. Hicks hoped she would receive drift monitoring data in time for the meeting or the meeting will be rescheduled.

b. Lawn Care BMP Committee Update – G. Fish

- ☒ Fish reported the BMP committee had met twice. They have reviewed BMPs developed by other states and then focused on BMPs relating to weather and soil conditions. They plan to meet again in August. Fish hoped to have a more detailed report for the September meeting.

c. Variance Granted to Aroostook Arboriculture for 2006 for Roadside Vegetation Management Program on Town Roads in Aroostook County – H. Jennings

- ☒ Jennings alerted members to the variance staff had granted to Aroostook Arboriculture to do roadside applications for a number of towns. This was a repeat variance requiring only staff approval.

d. Vice Chair

- ☒ Jennings informed members that the Board currently had no vice chair since Berry had not been reappointed. Randlett stated that given the circumstances, it would be acceptable to elect a vice chair even though the matter was not on the agenda.

Jemison/Walton: Moved and seconded the nomination of Lee Humphreys as vice chair.

In Favor: Unanimous

12. Schedule and Location of Future Meetings

Date and location for the following meetings.

- ☒ Members agreed to hold meetings on September 15 and October 13.

13. Adjourn

- ☒ The meeting adjourned at 1:04 p.m.
- ☒

Henry Jennings
Acting Director